

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

OPTIMUM AIR SOLUTIONS INC.,

Plaintiffs,

v.

ARCH INSURANCE COMPANY, et al.,

Defendant.

No. 22-463 (SDW)(MAH)

**ORDER**

May 16, 2022

**WIGENTON**, District Judge.

Before this Court is the Report and Recommendation (“R&R”) entered on April 28, 2022, by Magistrate Judge Michael A. Hammer (“Judge Hammer”), (D.E. 29), recommending that this matter be dismissed for lack of subject matter jurisdiction. This Court has reviewed the reasons set forth by Judge Hammer in the R&R.<sup>1</sup> Based on the foregoing, and for good cause shown, it is hereby

**ORDERED** that the R&R of Judge Hammer, (D.E. 29), is **ADOPTED** as the conclusions of law of this Court and this matter is hereby **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. Plaintiff shall have until Thursday, May 19, 2022 at 4 PM to file a responsive objection and explain why this matter should remain in this Court, despite dismissal of

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<sup>1</sup> The parties did not file objections to the R&R. On May 12, 2022, Plaintiff filed a Notice of Voluntary Dismissal, pursuant to Federal Rule of Civil Procedure (“Rule”) 41(a)(1), for all defendants except Arch Insurance Company. (D.E. 30.) That pending filing is not responsive to the R&R. See L. Civ. R. 72.1(c)(2). The dismissal of parties does not impact the determination of subject matter jurisdiction. “[T]he jurisdiction of the Court depends upon the state of things at the time of the action brought,” *Grupo Dataflux v. Atlas Glob. Grp., L.P. et al.*, 541 U.S. 567, 570–71 (2004) (quoting *Mollan v. Torrance*, 22 U.S. 537, 538 (1824)), and courts adhere to the “time of filing” rule and “measure[] all challenges to subject [] matter jurisdiction premised upon diversity of citizenship against the state of facts that existed at the time of filing,” *id.*

non-diverse parties. Should Plaintiff fail to file a timely objection, this matter shall be  
**DISMISSED WITH PREJUDICE.**

**SO ORDERED.**

/s/ Susan D. Wigenton  
**SUSAN D. WIGENTON, U.S.D.J.**

Orig: Clerk  
cc: Parties  
Michael A. Hammer, U.S.M.J.